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VIRGINIA HOUSING COMMISSION

**SUMMARY**
**Affordable Housing, Real Estate Law, and Mortgages Workgroup**
**Tuesday, August 7, 2018, 1:00 p.m.**
**House Room 1, The Capitol**

The Affordable Housing, Real Estate Law, and Mortgages Workgroup meeting was called to order at 1:00 p.m. by Delegate Christopher Peace, Chair.

**Members Present:**
Delegate Chris Peace, Chair; Delegate David Bulova; Delegate Betsy Carr; Neil Barber, Community Futures; Robert Bradshaw, Independent Insurance Agents of Virginia; Paul Brennan, Virginia Housing Development Authority; Andrew Clark, Home Building Association of Virginia; Tyler Craddock, Virginia Association of Housing & Community Development Officials; Chip Dicks, Virginia Association of Realtors; Andrew Friedman, Virginia Beach Department of Housing & Neighborhood Preservation; Brian Gordon, Apartment & Office Building Association of Metropolitan Washington; Michelle Gowdy, Virginia Municipal League; Kelly Harris-Braxton, Virginia First Cities; Pam Kestner, Department of Housing & Community Development; Kelly King Horne, Homeward; Joe Lerch, Virginia Association of Counties; Renee Pulliam, Virginia Apartment Management Association; Jay Speer, Poverty Law Center; Elizabeth Steele, Stewart Title; William Walton, Real Property, Inc.; Elizabeth Palen, Executive Director

**Topic: Vested Rights/Landscape Cover**
**Relevant legislation:** HB 1595 Wilt, 2018)

Chip Dicks, on behalf of the Apartment and Office Association, reported that he had conferred with all interested parties, including Harrisonburg Fire Chief Eon Bennett and Loudoun County Fire Chief Keith Johnson. Both fire chiefs view landscape cover as a fire hazard that should be a part of the Fire Code but have agreed to lay the bill on the table and not to pursue any legislation on this topic in 2019. The Workgroup unanimously agreed to express this intent to the full Housing Commission.

DELEGATE DANNY W. MARSHALL
DELEGATE DAVID L. BULOVA
DELEGATE BETSY CARR
DELEGATE BARRY D. KNIGHT
DELEGATE CHRISTOPHER K. PEACE
SENATOR MAMIE E. LOCKE
SENATOR GEORGE L. BARKER
SENATOR WILLIAM M. STANLEY, JR.
CYNTHIA HALL
LAURA D. LAFAYETTE
LAWRENCE PEARSON

**Topic: Inoperable Vehicles on Private Property**
**Relevant legislation:** SB 454 (2018, Mason)

A draft bill concerning inoperable motor vehicles, included in members' packets for their consideration at this meeting, is a revised version of SB 454, which in the 2018 Session passed the Senate and was narrowly defeated in the House-of Delegates.

A small workgroup consisting of local officials from James City County and members of the Virginia Municipal League (VML) and the Virginia Association of Counties (VACO) reached a consensus that the proposed legislation should impose a statewide mandate but that its provisions should not impose a criminal penalty.

The proposed bill states that any locality may define a vehicle as inoperable if both the vehicle license plate and the vehicle's inspection decal are more than 60 days expired, unless such vehicle is shielded or screened from view, and that the locality may at its discretion waive a misdemeanor penalty for a violation. The proposed bill removes the locality's authority to require vehicles to be kept in a fully enclosed building or structure in order to meet the condition of being shielded or screened from view in a residential or commercial or agricultural setting. The proposed legislation enables the locality to pass more specific legislation.

Delegate David Bulova suggested the addition of an enactment clause that would grandfather existing ordinances on this topic.

Joe Lerch, representing VACO, agreed in concept to the proposed language but stated that he will take the proposed language to the counties he represents to have them approve the language change.

Chairman Peace instructed the VML and VACO representatives that there would be one more meeting of the Affordable Housing and Real Estate Law and Mortgages Workgroup and asked the members to consider and confirm if perhaps it was James City County's intent to include itself among specified localities in an existing statute rather than to expand the existing statute to apply statewide. Further discussion is expected at the next meeting.

**Topic and Presentation: Residential Rent-to-Own; Eric Dunn, National Housing Law Project**
**Relevant legislation:** Originated from SB 197 (Locke,2018) SB 280 (Peterson, 2018)

Mr. Dunn presented the historical context of the issue of residential rent-to-own to the Workgroup.

According to Mr. Dunn, during the New Deal era, a typical home loan was a federally insured mortgage for 80 percent of the purchase price for a term of 20 years. Prior to this period, the practice of redlining—categorizing certain home buyers as high risk, and therefore ineligible for federally insured mortgage loans, on the basis of race or ethnicity—was widespread, and many Americans were effectively denied home ownership. Under an alternative instrument known as a land contract, a tenant-occupant of real property agreed to pay the purchase price in regular installments to the owner for a period of 20 to 30 years; only then would ownership of the property transfer to the tenant. If the tenant defaulted on any payment, the land contract would immediately go into forfeiture and the tenant would lose all "equity" he had already paid.

By the 1960s, land contracts pretty much ceased to be part of the homeownership landscape. But beginning in the 1990s, home-equity flipping and purchase money loans contributed to the housing bubble that precipitated the 2007 mortgage crisis. During the crisis and its slow recovery, many homes went into foreclosure and too few buyers successfully bid on homes during foreclosure sales, leading to a glut of so-called unsellable homes.

Private equity firms VISION and Harbor Advisors began to operate in Virginia to rent-to-own substandard properties that are in too poor a condition to legally rent. These rent-to-own real estate transactions often involve properties with water intrusion, mold, and other significant habitability issues.

Currently, Virginia doesn't regulate rent-to-own transactions; critics charge that common law alone is inadequate. In most rent-to-own transactions, there are no appraisals, home inspections, real estate agents, or HUD-approved counsellors overseeing any portion of the sale. Such transactions may involve terms that are egregiously disadvantageous to the tenant, such as mandatory arbitration and the waiver of the purchaser's consumer protections. If there is a default in payment, the tenant's interest is forfeited and the tenant can be evicted.

Nevertheless, many tenant-occupants in such rent-to-own transactions believe they are buying a home and pay the taxes on the property, when in fact they have only the rights of a tenant.

Traditional mortgages, including truth-in-lending provisions, are recorded in localities' land records. This ensures that the owner cannot then refinance the property that the tenant believes he is paying to own. Recording the land contract puts potential lenders or others on notice of the contract and makes sure that property taxes are paid so delinquent taxes don't accrue and potentially exceed the value of the property. If 25 percent or more of the purchase price has been paid, a foreclosure process could recoup investment for the rent-to-own purchaser. Also, there is no right to prepay without penalty so the tenant/buyer may obtain a traditional bank loan.

Chairman Peace asked whether a rent-to-own option would actually be a good deal for a person who didn't have the credit to buy, or was not otherwise a qualified buyer, if no other purchase options were available to him?

Mr. Dunn replied that the tenant/buyer in a rent-to-own transaction ends up with a worse deal in an unsafe-to-occupy house; the tenant-buyer has fewer rights than a traditional buyer, and the landlord doesn't have to make needed repairs.

Peace asked if there was a duty of maintenance on the part of the rent-to-own tenant. He noted that this cannot be shifted from the landlord to the tenant in a traditional landlord/tenant contract. He added that clear title is very important and asked if title would convey by special warranty deed. Mr. Dunn said he would research those questions and respond.

Mr. Dicks said some installment sales are -not controlled by contract and that the deed is often recorded when there is owner financing. When a certain portion of a tenant's rental payment is earmarked for purchase, common law demands that the landlord/seller hold the money in a fiduciary account and that the money not be commingled with other funds. He acknowledged that these conditions are frequently not met. Occasionally, he stated, a distressed property owner forestalls a foreclosure by creating a rent-to-own contract, thereby violating the initial mortgage contract.

Chairman Peace voiced concern that leases are not written and that best practices are not conformed to in rent-to-own contracts.

Mr. Dicks and Mr. Dunn will return to present to the Workgroup at the next meeting. They will look to other models from other states and model statutes and examine the regulatory schemes of other states.

**Topic and Presentation: Home Inspections and Radon; Steve Harrison, Radiological Health Director, Virginia Department of Health; Wally Dorsey, Radon-Ease, Inc.**
**Relevant legislation:** SB 460 (Stanley. 2018), HB 1534, (R. Bell, 2018)

Steve Harrison spoke to the Workgroup about radon and the Department of Health's inspection and mitigation framework. He explained that radon is a naturally occurring gas that seeps into structures through ground fissures and structural cracks. The federal EPA rates radon zones as low, medium, or high; the I-95 Corridor is rated high.

Mr. Harrison stated that inspections determine when mitigation of radon is needed in the Commonwealth. Currently in the Commonwealth (i) schools should be tested upon construction in the ground floors of classrooms, (ii)

certified testers and mitigators are used, (iii) the Department of Health has a website dedicated to radon mitigation and how to find radon professionals, (iv) professionals must be certified by at least one of two national boards or the EPA, and (v) there is no enforcement authority by the Department of Health.

By December 1, 2018, as HB 1534, 2018, directed, the Department of Health will determine if any additional oversight over radon testing and mitigation would be beneficial to mitigate radon.

The EPA recommends using separate firms to test and mitigate radon. Currently there are 400 testers of radon in the Commonwealth, not enough testers and mitigators to self-fund a licensing program.

Wally Dorsey, owner of Radon-Ease, Inc., informed the Workgroup about radon by giving several examples of radon testers that yielded different results at the same properties. He supports full licensure of radon inspectors in Virginia, because of the current inconsistent quality of inspectors, as soon as there are enough professionals in the Commonwealth to self-fund a licensure program; he also advocates (a) certification of testers and mitigators of radon; (b) enforcement of radon regulations to identify and penalize those who violate national standards; and (c) notification to home owners about radon and its detection and mitigation.

The Chair concluded that there will be no formal action on this topic.

**Topic: Hoarding**
**Relevant legislation:** HB 391 (Keam, 2018)

Delegate Keam was unable to attend the meeting; as patron of HB 391, he asked that discussion of the bill and of the issue of hoarding be extended to the next meeting. A study may be conducted by Department of Housing and Community Development or the Governor's Office; the Commission will continue to monitor the issue.

For informational purposes, members were given written material (available on the website) on the City of Houston and its first anti hoarding ordinance.

The chair called for public comment, hearing none, the meeting adjourned at 3:10 p.m.